Health Bill

AMENDMENTS

TO BE MOVED

IN COMMITTEE OF THE WHOLE HOUSE

[Supplementary to the Second Marshalled List]

After Clause 51

EARL HOWE

After Clause 51, insert the following new Clause—

"Principles governing exercise of regulatory functions

After section 14Z62A of the National Health Service Act 2006 insert—

"14Z62B Principles governing exercise of regulatory functions

(1) The Secretary of State must only exercise a regulatory function in relation to—

(a) an integrated care board,

(b) an NHS trust, or

(c) an NHS foundation trust,

on the basis of relevant performance information.

(2) In this section "regulatory function" includes—

(a) the giving of directions to an integrated care board, an NHS trust or an NHS foundation trust,

(b) the exercise of intervention powers, including under section 57B (conversion of failing NHS foundation trust into NHS trust) and section 14Z62A (performance: significant failure),

(c) the imposition or modification of licence conditions under section 111 of the Health and Social Care Act 2012 (imposition of licence conditions on NHS foundation trusts), and

(d) the instigation of any assessment, review or investigation.

(3) "Relevant performance information" means information relating to—

(a) the exercise by an integrated care board of its statutory duties under Part 2 Chapter A3 of this Act (integrated care boards),

(b) the exercise by an NHS trust of its statutory duties under sections 26, 26A and 26B of this Act (duties of NHS trusts),

(c) the exercise by an NHS foundation trust of its statutory duties under sections 63, 63A and 63B of this Act (duties of NHS foundation trusts),

(d) the requirements of any licence issued under this Act,

(e) the requirements of the NHS standard contract, and

(f) compliance with other applicable statutory requirements.

(4) The Secretary of State must not exercise a regulatory function—

(a) on the basis of political considerations, or

(b) on the basis of information that is not relevant performance information.

(5) In exercising regulatory functions, the Secretary of State must have regard to the need to maintain the safety of people who use health care services.

(6) The Secretary of State must, in exercising their functions, also have regard to the following matters in so far as they are consistent with the matters referred to in subsection (5)—

(a) the desirability of securing improvement in the quality of NHS health care services and in the efficiency of their provision,

(b) the need for commissioners of NHS health care services to ensure that the provision of access to those services operates fairly,

(c) the need for commissioners of NHS health care services ensure that people who require those health care services are provided with access to them,

(d) the need for commissioners of NHS health care services to make the best use of resources when doing so,

(e) the desirability of persons who provide NHS health care services to co-operate with each other in order to improve the quality of those services,

(f) the need to promote research into matters relevant to the NHS by persons who provide NHS health care services, and

(g) the need for high standards in the education and training of health care professionals who provide NHS health care services.

14Z62C Operational separation of regulatory functions

(1) The Secretary of State must ensure that regulatory functions are exercised in a manner that is operationally separate from—

(a) the exercise of functions relating to the commissioning of health services,

(b) the allocation or management of financial or other resources,

(c) the formulation of government policy relating to the health service, and

(d) the exercise of powers to give directions or to make regulations or orders under this Act, other than where those powers are themselves regulatory functions.

(2) The Secretary of State must make arrangements to ensure that—

(a) persons principally responsible for exercising regulatory functions are operationally distinct from persons principally responsible for exercising the functions mentioned in subsection (1),

(b) regulatory decisions are made independently of the exercise of the functions mentioned in subsection (1), and

(c) information obtained in the exercise of regulatory functions is subject to appropriate arrangements governing its use and disclosure.

(3) The Secretary of State must ensure that there is not, and could not reasonably be regarded as being, a conflict between—

(a) the exercise of a regulatory function, and

(b) the exercise of any other function of the Secretary of State.

(4) Information obtained solely through the exercise of a regulatory function must not be taken into account in the exercise of a function mentioned in subsection (1) unless—

(a) its use is necessary for the protection of patient safety,

(b) its use is necessary for the continuity of essential health services,

(c) its use is authorised by or under an enactment, or

(d) the information has been published or otherwise lawfully made available for that purpose.

(5) Where the Secretary of State considers that a conflict has arisen, or could reasonably be regarded as having arisen, between the exercise of a regulatory function and the exercise of another function, the Secretary of State must publish a statement setting out—

(a) the nature of the conflict,

(b) the steps taken to manage or resolve it,

(c) the decision reached, and

(d) the reasons for that decision.

(6) The Secretary of State must publish a statement under subsection (5) as soon as reasonably practicable after reaching the decision.

(7) The Secretary of State must, in respect of each financial year, prepare and publish a report setting out—

(a) the arrangements maintained during that year for securing the operational separation of regulatory functions,

(b) the steps taken during that year to comply with the duty under subsection (3),

(c) any conflict in respect of which a statement was required under subsection (5), and

(d) any material change made during that year to the arrangements described in paragraph (a).

(8) The Secretary of State must lay a copy of the report under subsection (7) before Parliament.

(9) In this section, "regulatory function" has the meaning given by section 14Z62B.""

Member's explanatory statement
This new clause seeks to put the principles governing regulatory decisions into statute and create operational separation of regulatory functions from other functions within the Department of Health and Social Care.

After Clause 84

LORD MOHAMMED OF TINSLEY

After Clause 84, insert the following new Clause—

"Death certification: public health and health inequalities

(1) The Secretary of State must, within 12 months of the day on which this Act is passed, carry out and publish an assessment of the adequacy of arrangements for the scrutiny and certification of the cause of death in England in supporting—
  (a) the accurate and timely collection of information about deaths for the purposes of public health surveillance and the monitoring of mortality,
  (b) the identification of risks to the safety of patients, and
  (c) the reduction of inequalities in accordance with section 1C of the National Health Service Act 2006 (duty as to reducing inequalities).

(2) The assessment must consider—
  (a) the capacity of medical examiners, and of medical practitioners providing services as part of the health service, including general practitioners, to scrutinise deaths and certify the cause of death promptly, including at weekends and on public holidays,
  (b) the time taken to scrutinise deaths and certify the cause of death, and
  (c) whether delays in certification disproportionately affect particular communities.

(3) If the assessment finds that the arrangements are inadequate, the Secretary of State must, within six months of its publication, publish and lay before Parliament a plan setting out the steps to be taken to remedy them.

(4) In this section—
  "medical examiner" means a medical examiner appointed by an English NHS body under section 18A of the Coroners and Justice Act 2009;
  "general practitioner" means a medical practitioner providing primary medical services under Part 4 of the National Health Service Act 2006."

Member's explanatory statement
This new clause would require the Secretary of State to assess whether death certification by medical examiners, GPs and other NHS doctors supports public health surveillance, patient safety and the reduction of health inequalities, and to publish a plan to remedy any inadequacy.

LORD BABUDU

After Clause 84, insert the following new Clause—

"Transparency of prevention spending

(1) The National Health Service Act 2006 is amended as follows.

(2) After section 12F (expected mental health spending), insert—

"12FA Expected prevention spending

(1) The Secretary of State must, in respect of each financial year, publish and lay before Parliament a document—

(a) stating, by comparison with the previous financial year—

(i) whether the Secretary of State expects there to be an increase in the amount of expenditure incurred by the Secretary of State and integrated care boards (taken together) in relation to preventive health services, and

(ii) whether the Secretary of State expects there to be an increase in the proportion of the expenditure incurred by the Secretary of State and integrated care boards (taken together) that relates to preventive health services, and

(b) explaining the basis for the statements made under paragraph (a).

(2) The Secretary of State must publish and lay the document before the financial year to which it relates.

(3) As soon as practicable after the end of each financial year, the Secretary of State must publish and lay before Parliament—

(a) a statement of the amount of expenditure incurred by the Secretary of State and integrated care boards during the year (taken together) in relation to preventive health services,

(b) a calculation of the proportion of the expenditure incurred by the Secretary of State and integrated care boards during the year (taken together) that relates to preventive health services, and

(c) an explanation of the statement and calculation.

(4) For the purposes of this section, expenditure incurred by the Secretary of State in relation to preventive health services includes any grant paid by the Secretary of State to a local authority, within the meaning given by section 2B(5), towards expenditure incurred by it in the exercise of its functions under section 2B(1).

(5) In this section, "preventive health services" means—

(a) services provided as part of the health service that are classified as preventive care in the UK Health Accounts published by the UK Statistics Authority,

(b) services provided, and other steps taken, by local authorities in the exercise of their functions under section 2B(1),

(c) services provided as part of the health service, expenditure on which is classified by the Treasury as preventative in setting departmental expenditure limits, and

(d) such other services provided as part of the health service for the prevention of ill health as the Secretary of State may specify in a document under subsection (1), having consulted the UK Statistics Authority."

(3) In section 14Z58 (annual report), after subsection (4) insert—

"(4A) An annual report must also include—

(a) a statement of the amount of expenditure incurred by the integrated care board during the financial year in relation to preventive health services (within the meaning given by section 12FA),

(b) a calculation of the proportion of the expenditure incurred by the integrated care board during the financial year that relates to preventive health services, and

(c) an explanation of the statement and calculation.""

Member's explanatory statement

This new clause would require the Secretary of State to state each year whether NHS and ICB spending on prevention, including the public health grant, is expected to rise, and to report on spending. Each ICB would be required to report its own figure.

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